

SPENCER FANE LLP

David E. Funkhouser III, Esq., Bar No. 022449

Jessica A. Gale, Esq., Bar No. 030583

2415 E. Camelback Road, Suite 600

Phoenix, AZ 85016-4251

Telephone: (602) 333-5451

Facsimile: (602) 333-5431

Email: dfunkhouser@spencerfane.com

jgale@spencerfane.com

GOODWIN PROCTER LLP

Scott T. Weingaertner, Esq. (*admitted pro hac vice*)

Stefan Mentzer, Esq. (*admitted pro hac vice*)

Timothy Keegan, Esq. (*admitted pro hac vice*)

The New York Times Building

620 Eighth Avenue

New York, NY 10018

Telephone: (212) 813-8800

Facsimile: (212) 202-6268

Email: SWeingaertner@goodwinlaw.com

Email: SMentzer@goodwinlaw.com

Email: TKeegan@goodwinlaw.com

Attorneys for Defendant TrackMan, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Wyoming Intellectual Property Holdings,
LLC,

Plaintiff,

vs.

TrackMan, Inc.,

Defendant.

Case No. 2:23-cv-02518-JJT

**DECLARATION OF DAVID E.
FUNKHOUSER III IN SUPPORT OF
DEFENDANT TRACKMAN, INC.'S
STATEMENT OF ATTORNEYS' FEES**

(Assigned to the Hon. John J. Tuchi)

Pursuant to L.R. Civ. 54.2, 28 U.S.C. § 1746, and the Court's February 27, 2024 Order (Doc. 20), I, David E. Funkhouser III, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and am, in all respects, competent to make this Declaration. I have personal knowledge of the matters and facts set forth in this Declaration and, if sworn as a witness, am competent to testify thereto.

2. I am an attorney duly licensed to practice in the State of Arizona. I am a

1 partner with the law firm of Spencer Fane LLP and am the Managing Partner of the office
 2 in Phoenix. This Declaration is offered in support of Defendant TrackMan, Inc.'s Statement
 3 of Attorneys' Fees submitted pursuant to the Court's Order dated February 27, 2024 (Doc.
 4 20).

5 3. I am a graduate of the University of Iowa College of Law and have been
 6 admitted to practice in Arizona since 2003 where I have specialized in complex commercial
 7 litigation for over 20 years. My current billing rate is \$650/hour. As a twenty plus year
 8 practitioner and as the Managing Partner of the Spencer Fane office in Phoenix, I am
 9 familiar with the standard of care and practice in Arizona.

10 4. Spencer Fane serves as local counsel in this matter, assisting the law firm of
 11 Goodwin Procter LLP with reviewing and revising drafts, filings, and overall case strategy.

12 5. Another attorney at Spencer Fane works on this case under my direction as
 13 indicated below. It is necessary to utilize this attorney to accommodate my own and her
 14 individual work commitments and conflicts on other cases. Division of responsibilities is
 15 assigned to minimize any duplication of effort. In those instances where some amount of
 16 duplication was inevitable, I made appropriate revisions to the bills, so that the client was
 17 not charged for this duplication.

18 6. Jessica Gale is an attorney licensed in Arizona who works on this matter. She
 19 graduated from the University of Arizona James E. Rogers College of Law and has been
 20 admitted to practice in Arizona since 2013. She is a partner at Spencer Fane and her practice
 21 is in the area of commercial litigation. Her responsibilities and billing rate reflect her
 22 training, experience, and skill.

23 7. TrackMan has agreed to pay Spencer Fane's hourly billing rates. The relevant
 24 billing rate for each individual is as follows:

<u>Attorney</u>	<u>Hourly Rate (2024)</u>
David E. Funkhouser III	\$650.00
Jessica A. Gale	\$550.00

28 8. The billing rates reflected above are the hourly rates the firm customarily

1 charges clients for work performed by the specified attorneys.

2 9. Spencer Fane considers its billing rates to be reasonable, given due
3 consideration to the legal professionals' abilities, training, education, experience, skill and
4 professional standing, the intricacy and difficulty of the work performed, the time and skill
5 required, the responsibility imposed, and the result obtained. Based on my familiarity with
6 the legal community in Phoenix, I believe that the foregoing rates are reasonable and are
7 consistent with the hourly rates current prevailing in the community for similar work in
8 civil litigation cases.

9 10. The Itemized Statement of Fees, attached as **Exhibit A** hereto, is a detailed
10 chronological breakdown of the legal services provided and the time spent in connection
11 with the Motion to Dismiss (Doc. 14) and Defendant's Statement of Attorneys' Fees.
12 Counsel for TrackMan submits this information in an effort to recover the attorneys' fees
13 TrackMan expended in preparing the Motion to Dismiss and Defendant's Statement of
14 Attorneys' Fees. In order to do so, it must provide detailed descriptions of the legal services
15 that it provided. *See Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 188 (App.
16 1983). Counsel for TrackMan is not intentionally waiving any attorney/client or work
17 product privilege by submitting statements that Spencer Fane sent to TrackMan in relation
18 to this matter, which are kept in the usual course of business. These billing statements were
19 in turn compiled from the daily time records of the individual attorneys involved, which
20 were kept contemporaneously with the services provided.

21 11. I have reviewed the timekeeping and billing records maintained by the firm
22 in the ordinary course of its business that pertain to this matter. During the course of this
23 representation, I reviewed the billings to TrackMan on a monthly basis and, if appropriate,
24 wrote off fees attributable to any time that was not productively spent on TrackMan's
25 behalf.

26 12. In my opinion, the services set forth in the Statement were actually,
27 reasonably, and necessarily incurred. None of the time included in the Statement was
28 wasted, inappropriate, or unnecessary. For that reason, and the reasons set forth in

1 Defendant's Statement of Attorneys' Fees, TrackMan seeks an award of \$5,542.00 in
2 attorneys' fees related to the fees incurred by Spencer Fane LLP.

3 13. Based upon its fee agreement with Spencer Fane, TrackMan has agreed to
4 pay the total charges for the itemized services set forth in Exhibit A.

5 14. In my opinion, the attorneys' fees for services requested herein totaling
6 \$5,542.00 were reasonably and necessarily expended and are reasonable in amount.

7
8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed this 8th day of March, 2024.

10
11 *s/ David E. Funkhouser III*

12

David E. Funkhouser III

EXHIBIT A							
Itemized Statement of Spencer Fane Attorneys' Fees for Defendant TrackMan, Inc.							
Matter	Work Date	Timekeeper Name	Narrative	Hours	Rate	Amount	
5515518.0001	2/10/2024	Funkhouser III, David E.	Work on potential language for Court-required Certificate of Conferral to accompany Motion to Dismiss filing.	0.40	650.00	\$ 260.00	
5515518.0001	2/12/2024	Funkhouser III, David E.	Edit and revise initial draft of Motion to Dismiss (1.5), emails to and from lead counsel regarding same (.3), edit revised draft of Motion to Dismiss (.9), confirm approval of final draft of Motion to Dismiss (.1), and ensure timely filing of same (.1).	2.90	650.00	\$ 1,885.00	
5515518.0001	2/12/2024	Funkhouser III, David E.	Work on content for stand-alone Certificate of Conferral to be filed concurrently with Motion to Dismiss (.4), emails to and from lead counsel regarding same (.2), and finalize and file Certificate of Conferral concurrently with the Motion to Dismiss (.1).	0.70	650.00	\$ 455.00	
5515518.0001	2/12/2024	Funkhouser III, David E.	Review, assess, and respond to emails from Plaintiff's counsel regarding matter, failure to properly respond to our demand to amend the Complaint, and confirm intent to file a Motion to Dismiss today.	0.20	650.00	\$ 130.00	
5515518.0001	2/12/2024	Funkhouser III, David E.	Work on Declaration of Scott Weingaertner, review and assess Exhibits to same, emails to and from lead counsel regarding same and confirmation to file Declaration, and include Declaration as an Exhibit to Motion to Dismiss.	0.60	650.00	\$ 390.00	
5515518.0001	2/12/2024	Gale, Jessica A.	Review and analyze the Court's orders regarding filing requirements (.4); revise and finalize the Notice of Certification of Conferral (.2).	0.60	560.00	\$ 336.00	
5515518.0001	2/27/2024	Funkhouser III, David E.	Review and assess Order denying Defendant's Motion to Dismiss, ordering Plaintiff to show cause why the Court should not sanction it for failing to participate in good faith in the meet-and-confer process as the Court required, and ordering that Defendant shall file a statement of the reasonable costs and attorneys' fees it incurred in preparing the Motion to Dismiss, forward Order to lead counsel, with comment, and related follow-up.	0.40	650.00	\$ 260.00	
5515518.0001	2/29/2024	Gale, Jessica A.	Work on TrackMan's Statement of Attorneys' Fees related to the Motion to Dismiss.	0.40	560.00	\$ 224.00	
5515518.0001	2/29/2024	Funkhouser III, David E.	Review, assess, and respond to emails from lead counsel regarding strategy for submission of attorneys' fees and costs related to Motion to Dismiss per Court Order and follow-up telephone conversation with lead counsel regarding same.	0.50	650.00	\$ 325.00	
5515518.0001	3/3/2024	Gale, Jessica A.	Draft Declaration of D. Funkhouser in support of the Statement of Attorneys' Fees.	0.60	560.00	\$ 336.00	
5515518.0001	3/4/2024	Funkhouser III, David E.	Work on draft Declaration in Support of Statement of Attorneys' Fees.	0.50	650.00	\$ 325.00	
5515518.0001	3/4/2024	Gale, Jessica A.	Revise and supplement the draft Declaration of D. Funkhouser and Ex. A thereto for the Statement of Attorneys' Fees.	0.20	560.00	\$ 112.00	
5515518.0001	3/7/2024	Gale, Jessica A.	Revise and finalize the Statement of Attorneys' Fees and supporting exhibits.	0.90	560.00	\$ 504.00	
				8.90		\$ 5,542.00	